

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

|   |   |                             |
|---|---|-----------------------------|
| <b>DAVID ANTHONY McKINNEY,</b>          | ) |                             |
|   | ) |                             |
| <b>Plaintiff,</b>                       | ) |                             |
|   | ) |                             |
| <b>vs.</b>                              | ) | <b>CIVIL NO. 07-495-GPM</b> |
|   | ) |                             |
| <b>ALBERTO GONZELES and E.A. STEPP,</b> | ) |                             |
|   | ) |                             |
| <b>Defendants.</b>                      | ) |                             |

**MEMORANDUM AND ORDER**

**MURPHY, District Judge:**

Plaintiff, formerly an inmate in the United States Penitentiary at Marion, Illinois, filed this action under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671-2680. He claims that the Warden ( E.A. Stepp) ordered the confiscation of his prayer oil. He was not able to resolve this matter through the administrative process, so now he brings this action seeking damages for the loss of prayer oil.

Plaintiff named Alberto Gonzeles and E.A. Stepp as defendants in this action but the United States of America is the only proper defendant. *See* 28 U.S.C. § 2679(b).

**IT IS HEREBY ORDERED** that the United States of America is **SUBSTITUTED** as Defendant in this action.

**IT IS FURTHER ORDERED** that Defendants **GONZELES** and **STEPP** are **DISMISSED** from this action without prejudice.

**IT IS FURTHER ORDERED** that in all future pleadings, the title of this case shall be “*David Anthony McKinney, Plaintiff, vs. United States of America, Defendant.*”

The Clerk is **DIRECTED** to prepare a summons for the **UNITED STATES OF AMERICA**. The Clerk shall forward the summons, USM-285 forms submitted by Plaintiff, and sufficient copies of

the complaint to the United States Marshal for service.

The Clerk is **FURTHER DIRECTED** to prepare a copy of the summons, a copy of the complaint, and a copy of this Order to be served by the United States Marshal on the **ATTORNEY GENERAL of the UNITED STATES**.

The United States Marshal is **DIRECTED** to serve the original summons and complaint on the **UNITED STATES ATTORNEY for the SOUTHERN DISTRICT OF ILLINOIS**, and a copy of the summons and complaint on the **ATTORNEY GENERAL of the UNITED STATES**.

**IT IS FURTHER ORDERED** that Plaintiff shall serve upon the United States Attorney for the Southern District of Illinois a copy of every further pleading or other document submitted for consideration by this Court. He shall include, with the original paper to be filed with the Clerk of the Court, a certificate stating the date that a true and correct copy of any document was mailed to the United States Attorney. Any paper received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

**IT IS FURTHER ORDERED** that pursuant to Local Rule 72.1(a)(2), this cause is referred to a United States Magistrate Judge for further pre-trial proceedings.

**IT IS FURTHER ORDERED** that this entire matter be referred to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral*.

**IT IS SO ORDERED.**

DATED: 09/24/08

s/ G. Patrick Murphy  
G. Patrick Murphy  
United States District Judge